

APPEAL NO. 031503  
FILED JULY 23, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 9, 2003. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease, because he did not report his work-related carpal tunnel syndrome (CTS) condition in a timely manner; (2) that the date of injury is \_\_\_\_\_; (3) that the claimant did not have disability because his CTS is not compensable; (4) that the carrier is relieved from liability under Section 409.002 because the claimant failed to notify his employer in accordance with Section 409.001; and (5) that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy. The claimant appealed, disputing the date of injury and timely notice findings as well as the determination that he did not sustain a compensable injury and did not have disability. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant "did sustain a compensable injury in the form of an occupational disease"; "that the claimant sustained disability from the injury and it existed from September 13, 2002 through December 23, 2002"; that the claimant first notified his employer of a work related injury on \_\_\_\_\_; that the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy; that the claimant was diagnosed with CTS on \_\_\_\_\_, and that a nerve conduction study later confirmed the diagnosis. The two remaining issues in dispute at the CCH were: (1) What is the date of injury? and (2) Is the carrier relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001? Although the injury and "disability" stipulations are inartfully worded, it is clear the parties agreed that the claimant sustained a work-related injury in the form of an occupational disease, that he had been diagnosed with CTS, and that he was unable to obtain or retain employment at wages equivalent to the preinjury wage due to his work related injury.

The date of injury for a repetitive trauma injury (occupational disease) is the date the claimant knew or should have known that the disease "may be related to employment." Section 408.007. The date is somewhat of a "moving target," but need not be as early as the first symptoms nor as late as a definitive diagnosis. Texas Workers' Compensation Commission Appeal No. 970851, decided July 2, 1997. The date of injury, the date that the claimant knew or should have known that his CTS condition may have been related to his employment was a factual question for the

hearing officer to resolve. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947). There is sufficient evidence to support the finding that the date of injury is \_\_\_\_\_.

Section 409.001(a) provides that, if the injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. Section 409.002 provides in part that failure to notify an employer as required by Section 409.001(a) relieves the employer and the employer's insurance carrier of liability unless the Texas Workers' Compensation Commission determines that good cause exists for failure to provide notice in a timely manner. In this case, the issue of timely notice turns on the date of injury. The parties stipulated that the claimant first notified his employer of a work-related injury on June 19, 2002. Given our affirmance of the date of injury, we likewise affirm the determinations that the claimant failed to notify his employer in accordance with Section 409.001 and therefore the carrier is relieved of liability pursuant to Section 409.002.

Compensable injury is defined as an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle. Because the carrier is relieved of liability pursuant to Section 409.002, compensation is not payable and this otherwise compensable injury is therefore not compensable within the meaning of the statute. Section 401.011(10). The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 410.011(16). Because we have affirmed the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that he did not have disability.

We find no merit in the claimant's contention that the actions of the hearing officer and ombudsman were inappropriate. Finally, the claimant asserts that the hearing officer failed to discuss, and therefore, did not review the claimant's evidence in reaching his decision. We note that the hearing officer is not required to detail all of the evidence in the decision and order. See Texas Workers' Compensation Commission Appeal No. 93164, decided April 19, 1993. Nothing in our review indicates that the claimant's evidence was not fully considered by the hearing officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **HARTFORD INSURANCE COMPANY OF THE MIDWEST** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge